IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 6584 and 6585 of 2004

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WRIT PETITION NO : 6584 of 2004

Between:

1. Sadiqa Begum, W/o Gulam Hyder
H.No.20-1-350, Kokakitatti, Hussainialam, Hyderabad
2. Khalida Begum D/o Gluam Hyder
H.No.20-1-350, Kokakitatti, Hussainialam, Hyderabad

..... PETITIONERS

AND

1 The Branch Manager Life Insurance Corporation of India
Jedcherla Brach &Mandal, Mahaboobnagar District
2 TheSenior Divisional Manager, Life Insurance Corporation of India
Hyderabad Division, OPP; Secretariat Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of mandamus, declaring the action of the respondents in not settling the claim of the petitioners in pursuant to the death of Late Smt. Mahamuda Begum as illegal, arbitrary, and consequently to direct the respondents to pay the insured amount of Rs. 5,00,000/- (Rupees five lakhs only) with accident benefits to the petitioners towards to the settlement of the policy No.646120038 with interest.

Counsel for the Petitioners: MR.M.A.ASHFAQ MOHIUDDIN

Counsel for the Respondents: Mr. E.S.KUMAR

WRIT PETITION NO : 6585 of 2004

Between:

1. Gulam Dastagir, S/o. Gulam hyder,
R/o. H.No.20-1-350, Kokakitatti,' Hussainialam, Hyderabad.
2. Shaheda Begum, D/o. Gulam Hyder,
R/o. H.No.20-1-350, Kokakitatti,' Hussainialam, Hyderabad.
3. Fahmeeda Begum, D/o. Gulam Hyder,
R/o. H.No.20-1-350, Kokakitatti,' Hussainialam, Hyderabad.

..... PETITIONERS

AND

1 The Branch Manager, Life Insurance Corporation of India,
Jedcherla Branch & Mandal, Mahaboobnagar District.
2 The Senior Divisional Manager, Life Insurance Corporation of India,
Hyderabad Division, Opp: Secretariat, Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in not settling the claim of the petitioners in pursuant to the death of Late Smt. Mahamuda Begum as illegal, arbitrary and consequently to direct the respondents to pay the insured amount of Rs.15,00,000/- (Rupees fifteen lakhs only) with accident benefits to the petitioners towards to the settlement of the policy No. 646118602 with interest.

Counsel for the Petitioners: MR. M.A.ASHFAQ MOHIUDDIN

Counsel for the Respondents: MR. E.S.KUMAR

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 6584 and 6485 of 2004

COMMON ORDER:

These two writ petitions are disposed of by a common order since the point involved in both the writ petitions is one and the same.

In W.P. 6584 of 2004, it is stated that the daughter of the petitioner No.1 has taken L.I.C. policy for a sum of Rs.5,00,000/- with accident benefits giving the nomination of the petitioners, from the 1st respondent. The period of commencement of the policy is 30.3.2002. The daughter of petitioner No.1 was punctual in paying the policy instalments. She died in a road accident along with her husband. Thereafter the petitioners submitted a claim statement with the 1st respondent along with necessary documents, but the respondents did not pay the amount. Thereafter, the petitioners gave representations on 28.6.2003 and 8.10.2003 seeking settlement of the matter, but no action was taken. Hence the present writ petition.

The respondents filed counter stating that the contract of insurance cannot be agitated or adjudicated in the writ petition and the respondent-Corporation is entitled to investigate into the claim of the petitioners. In fact the respondent-Corporation had commenced investigation and in the course of investigation several suspicious and doubtful circumstances came to light. It is stated that both the deceased and her husband took out a number of insurance policies within 12 months to a tune of Rs.5.00 crores. The policies were not only obtained from the respondent-Corporation but also from several private insurers viz., M/s Birla Sun Life, M/s Bajaj Allianz and M/s Kotak Mahendra etc. the premiums of which went into several lakhs of rupees and one of the deceased in fact has submitted some more proposals for huge insurance cover with private insurance companies, which were either declined or remained as unconcluded contracts. Few days before the alleged accident, changes were effected in the nominations of the policies in such a way that neither of the wife and husband remain as nominee under any of the

policies. The alleged accident took place at 3.00 a.m. on 31.3.2003 and the investigations reveal that one of the deceased has withdrawn substantial amount from ATM machine located at CDR Hospitals, Hyderabad at 2.35 a.m. on the same night, making his balance in the bank almost nil, whereas the accident spot is located 41 kms. from the said ATM machine. The identity of one of the deceased and the statement of witnesses to the police and the private investigators is contradictory. Therefore, the respondent-Corporation as well as the private insurers requested the police to reopen the matter. In view of various suspicious circumstances as stated above, the petitioner cannot be permitted to seek payment without investigation as the respondent-Corporation sought for re-investigation and the same is pending and, therefore, the present writ petition is devoid of merit.

The allegations in the other writ petition i.e. W.P. 6585 of 2004 are almost one and the same except the relationship of the parties and the amount of policy. In this writ petition, the deceased is the sister of the writ petitioners and the policy is taken for Rs.15,00,000/-. The plea of the respondents is almost similar to that of the one taken in the counter filed by them in W.P. 6584 of 2004.

Learned counsel for the petitioners contended that under Clause 8(3) of the Insurance Regulatory and Development Authority (Protection of Policyholders' Interests) Regulations, 2002 (for short, Regulations, 2002), a claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. But, the respondents have not passed any order giving the reasons for not paying the amount covered under the policy and hence he prays to give a direction to the respondents to pass appropriate orders.

On the other hand, learned counsel for the respondents contended that in view of the suspicious circumstances with regard to the deaths of the deceased in both the cases the amount has not been paid and the prayer in the writ petitions is with regard to not settling the claim of the petitioners and consequential direction to pay

the insured amount covered under two policies, which cannot be decided by this court exercising the jurisdiction under Article 226 of the Constitution of India and hence he prays to dismiss the writ petitions.

It is specifically stated that both the deceased persons have taken policies to a tune of Rs.5.00 Crores within a span of 12 months in between January and December, 2002. The policies were not only obtained from the respondent-Corporation but also from several private insurers viz., M/s Birla Sun Life, M/s Bajaj Allianz and M/s Kotak Mahendra, the premiums of which went into several lakhs of rupees. It is also stated that one of the deceased has submitted some more proposals for huge insurance cover with private insurance companies, which were either declined or remained unconcluded contracts. Apart from that, same attempts were also made to obtain further policy of rupees One crore from the respondent-Corporation, which was not considered. It is also stated that few days before the alleged incident, changes were effected in the nominations of the policies in such a way that neither of the wife and the husband remain as nominee under any of the policies. It is also stated that one of the deceased withdrawn substantial amount from ATM machine located at CDR Hospitals, Hyderabad at 2.35 a.m. on the same night, making the balance in the bank almost nil. Within 25 minutes thereafter the accident took place at a distance of 41 kms. During the course of investigation, several suspicious circumstances have been emerged. As the respondents have commenced investigation and in the course of investigation several suspicious and doubtful circumstances came to light, the respondents did not settle the claim. No doubt, under Clause 8(3) of the Regulations, 2002 a claim under a life policy shall be paid or be disputed giving all the relevant reasons, within 30 days from the date of receipt of all relevant papers and clarifications required. But, a claim of warrant or investigation shall be completed within six months from the date of lodging the claim. Under Section 46 of the Insurance Act, 1938 the holder of a policy of insurance issued by an insurer in

respect of insurance business transacted in India, after the commencement of this Act, shall have the right notwithstanding anything to the contrary contained in the policy or an agreement relating thereto to receive payment in India on any sum claimed thereby and to sue for any relief in respect of the policy in any court of competent jurisdiction in India and if the suit is brought in India any question of law arising in connection with any such party shall be determined in accordance with law in force in India.

Therefore, this Section gives a right to the claimant to file a suit for grant of relief in respect of the policy in a court of competent jurisdiction. Since serious disputes questions of fact with regard to the manner of taking place of the accident and the suspicious circumstances have come to light in regard to the manner of taking policies worth about Rs.5.00 Crores and that the attempts have also been made to obtain policy worth about Rs.1.00 Crore from the respondent-Corporation and identity of one of the deceased is also clouded in suspicion, it is not desirable to resolve those complicated disputes questions of fact while exercising the power under Article 226 of the Constitution. When a right is given to the petitioners to take appropriate remedy under Section 47 of the Insurance Act, the petitioners have to establish their right in a court of competent civil jurisdiction. It is not a case of denying the benefit under the policy without any reasons. In such view of the matter, the petitioners have to take recourse to Section 47 of the Insurance Act by availing the alternative remedy. Even though alternative remedy is not a bar for this court in exercising the jurisdiction under Article 226, but it is a case where serious disputed questions of fact emerge from the pleadings.

In the alternative, learned counsel for the petitioners requested this court to give a direction to the respondents to consider the claim and if the claim is not settled, that the same should be contained reasons for not paying the amounts under the policies.

Though no prayer is sought for the said purpose, but in view of the fact that the respondents filed their counter stating the reasons for not paying the amount in view of the suspicious circumstances, no direction need be given.

The writ petitions are devoid of merit and therefore they are liable to be dismissed. However, this order will not preclude the petitioners from taking recourse to Section 47 of the Insurance Act.

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K.C. Bhanu, J.

Date: 28--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 **The Branch Manager Life Insurance Corporation of India Jedcherla Brach &Mandal, Mahaboobnagar District.**
2 **TheSenior Divisional Manager, Life Insurance Corporation of India Hyderabad Division, OPP; Secretariat Saifabad, Hyderabad.**

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